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GUEST EDITORIAL

THE KNOWLEDGE AND USE OF LAW BOOKS

The average lawyer, although he is usually and unfortunately unaware of the fact, knows little or nothing about law books and their contents, or how to make use of them to the best advantage. This may seem to be an exaggerated statement but it is based on and confirmed by many years of experience and observation on my part.

The inadequacy and insufficiency of the lawyer's use of his books results partly, of course, from a distaste of the drudgery involved in comprehensive researches. Its basis lies, however, in the sketchiness of the training he receives in law school. The present training or course in legal bibliography and the use of law books is entirely insufficient and incomplete. Since the subject is one that the law schools themselves appear to consider of little importance, the students themselves are unconsciously guided by that estimate and consider the subject as one of little importance.

My own deficiencies and lack of knowledge were borne in upon me after my graduation by the nature of the legal work I undertook, as was the case with many of my associates, although we were graduates of what were considered excellent law schools.

However, what may have considerably more bearing on the subject is the fact that for a considerable period of time I served as a reader of bar examination papers in a large and populous state possessing many excellent law schools. By reason of my experience on the editorial staffs of law book publishers (to which I shall refer subsequently), I was assigned to give special attention to those questions on law books and their use. I was instructed to grade without severity, for the examiners had learned from long experience that little could be expected of any examinees so far as knowledge of law books was concerned.

The misconceptions of the examinees were so extreme that it would have been ludicrous if it had not been so depressing. I remember a bar examination in which easily ninety per cent.

of the examinees answered almost every problem requiring the use of law books by prescribing resort to the Shepherd citators as the correct procedure. As flattering as this might be to the publishers of such citators, I am sure that they would be the first to admit that their citators are not the cure-all for every legal problem but must be used in connection with other books.

In many years on the editorial staffs of leading law book publishers I have had the advantage of becoming conversant with innumerable letters and calls from lawyers seeking aid in their researches, and professing (indeed sometimes complaining) of their inability to find the matter sought in their books. In the large majority of cases it develops that the matter sought lies right under their eyes. As the old saying has it, if it had been a bear it would have bitten them.

Now admittedly, law books are complex and contain a terrific mass of material. Nevertheless, they are not designed to confuse the user, but are instead designed with an eye to the helplessness of the average lawyer, the peculiarities of legal, particularly the local, terminology, the customary methods of classification and indexing, and, in short, with the intention of adapting the book to the lawyer, rather than compelling him to adapt himself to the book.

Usually, courses in bibliography and the like are given at the beginning of law school course. The student at this time is plunging headlong into law and is frequently confused and struggling to maintain his feet. For the study of law, unlike that of mathematics for example, does not proceed by easy stages from the easier methods and problems to the more difficult. The law student does not work his way gradually upward. Instead, he must immediately familiarize himself with and learn several more or less self-contained branches of legal study. While he is thus immersed it is ridiculous to expect him at the same time suddenly to learn all about law books, which are the working tools of practice, and their use. Studies in legal bibliography should be given later in the course of the three years study, or given in brief form the first year and then supplemented by further study later on.

Also, courses in legal bibliography usually contain instruction in the reading and obtaining the gist of cases, coupled with the writing of headnotes or synopses of the legal points or

principles involved. This is unquestionably valuable training. But only too frequently, instruction as to law books themselves is confined to a listing of the various types and names of the customarily used law books. The student may subsequently be required to write a brief which is supposed to test his ability to use the books and find the necessary authority required. This is somewhat similar to telling a beginner in mathematics that there are various ways of solving mathematical problems, such as the use of algebraic equations, quadratic equations or the like, and then turning him loose to solve an intricate problem with no more information than that. Unquestionably, a careful grounding in algebra or other branches is first necessary. Similarly, the various kinds and classes of law books should be carefully differentiated for the student, and their use and application carefully explained, illustrated and fixed in his mind.

Careful grounding should be given the student in the classification systems customarily used in digests and encyclopedias, and in the use of indexes, etc. One of the difficulties facing the young lawyer results from this matter of legal classification. As met in law school, his subjects are divided into such subjects as contracts, equity, real property, criminal law and the like, which however correct are nevertheless extremely general classifications that are no particular help or guide in facing digests and encyclopedias, where the complexity and amount of material require a more numerous amount of topics and titles. Also, the treatment of a subject, for example contracts, taught in a law school must necessarily be based on a relatively small number of selected cases and on basic principles. Such a subject appearing in digests and encyclopedias will appear under more than one heading than that of "Contracts" and even the latter heading alone will show a greater number of subdivisions and sub-classifications than ordinarily appears in the law school course. Of these the student may be unaware, and he is usually uninstructed in the classification even within the one topic as appearing in a digest or encyclopoedia.

Law books are the lawyer's tools of trade. Not only should he be thoroughly conversant with the various types, classes and divisions into which they fall, but he should be familiar with the contents of each type or individual book or set of books. And it is not alone sufficient to know that much. In addition,

the lawyer must know how to use the books, that is, the method of approach and search that he should apply in order to get the most from his books.

Because the lawyer may begrudge the time and tediousness necessary in any well conducted search, he omits it or skimps it, or delegates it where possible to clerks or youngsters fresh from law school. Likewise, the judge frequently delegates his research to law clerks or law secretaries. Such delegation may be made not only because the lawyer or judge wishes to escape the drudgery involved, but the idea seems frequently to prevail that the youngster fresh from law school has had the most recent contact with law books and accordingly is thoroughly familiar with their use. However, the use of law school texts and case books no more prepares the student for the use of law books required by the practicing lawyer than would knowledge of an outmoded rifle in the hands of a military academy student prepare such student in a knowledge of the intricacies and parts of a modern machine gun or automatic rifle. Some more adequate instruction is needed in the law school in these days to make the recent graduate adept at and to be depended on in legal research.

It is certainly a strange situation that the law schools should bend all their energies to teaching the principles of law, to modernizing their courses to take into consideration social, economic and governmental concepts, but should in effect treat and regard the course in law books and their use as a minor and unimportant subject. Such a course is indeed the "patsy" of almost every law school. No school for the training of army officers would ever train its students in all the principles of warfare and then send them out to fight without any knowledge of the weapons they must use to put the principles into practice.

Moreover, with the increase in the number of law books at the present time, and the undoubted duplication which exists (a matter now occupying the attention of many bars), a knowledge of law books and their contents is an economic necessity to the lawyer. He could save himself the expenditure of a good deal of money if he could judge and differentiate between those books necessary to him and those that are not.

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